

were not transferred to the current owner of the facility by the previous owner (e.g., as part of the contract involving the sale of the facility), the previous owner must make such records available to the Host Team for provision to the Inspection Team in accordance with section 305 of the Act. However, the current owner of a facility, upon receiving notification of an inspection (see § 716.5 of the CWC), is responsible for informing BIS if the previous owner did not transfer records for activities that took place under the previous ownership—this will allow BIS to contact the previous owner of the facility, to arrange for access to such records, if BIS deems them relevant to the inspection activities.

(f) *Effect of facility agreements.* Routine inspections at facilities for which the United States has concluded a facility agreement with the OPCW will be conducted in accordance with the facility agreement. The existence of a facility agreement does not in any way limit the right of the owner, operator, occupant, or agent in charge of the facility to withhold consent to an inspection request.

(g) *Hours of inspections.* Consistent with the provisions of the Convention, the Host Team will ensure, to the extent possible, that each inspection is commenced, conducted, and concluded during ordinary working hours, but no inspection shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(h) *Health and safety regulations and requirements.* In carrying out their activities, the Inspection Team and Host Team shall observe federal, state, and local health and safety regulations and health and safety requirements established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety. Such health and safety regulations and requirements will be set forth in, but will not necessarily be limited to, the facility agreement, if applicable.

(i) *Preliminary findings.* Upon completion of an inspection, the Inspection Team will meet with the Host Team and facility personnel to review the written preliminary findings of the In-

spection Team and to clarify ambiguities. The Host Team will discuss the preliminary findings with the facility, and the Host Team Leader will take into consideration the facility's input when providing official comments on the preliminary findings to the Inspection Team. This meeting will be completed not later than 24 hours after the completion of the inspection.

§ 716.5 Notification, duration and frequency of inspections.

(a) *Inspection notification*—(1)(i) *Content of notice.* Inspections of facilities may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises to be inspected. BIS will also provide a separate inspection notification to the inspection point of contact identified in declarations submitted by the facility. If the United States is unable to provide actual written notice to the owner and to the operator, occupant or agent in charge, BIS (or the Federal Bureau of Investigation, if BIS is unable) may post notice prominently at the facility to be inspected. The notice shall include all appropriate information provided by the OPCW to the USNA concerning:

- (A) The type of inspection;
- (B) The basis for the selection of the facility or location for the type of inspection sought;
- (C) The time and date that the inspection will begin and the period covered by the inspection; and
- (D) The names and titles of the Inspection Team members.

(ii) *Consent to inspection.* In addition to appropriate information provided by the OPCW in its notification to the USNA, BIS's inspection notification will request that the facility indicate whether it will consent to an inspection, and will state whether an advance team is available to assist the site in preparation for the inspection. If an advance team is available, facilities that request advance team assistance are not required to reimburse the U.S. Government for costs associated with these activities. If a facility does not agree to provide consent to an inspection within four hours of receipt of the

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inspection notification, BIS will seek an administrative warrant. The current owner of a facility, upon receiving notification of an inspection, is also responsible for informing BIS if the previous owner did not transfer (to the current owner) records for activities that took place under the previous ownership (see § 716.4(e) of the CWC—

this will allow BIS to contact the previous owner of the facility, to arrange for access to such records, if BIS deems them relevant to the inspection activities.

(iii) The following table sets forth the notification procedures for inspection:

TABLE TO § 716.5(a)(1)

| Activity | Agency action | Facility action |
|--|---|--|
| (A) OPCW notification inspection | <p>(1) U.S. National Authority transmits actual written notice and inspection authorization to the owner and operator, occupant, or agent in charge via facsimile within 6 hours.</p> <p>(2) Upon notification from the U.S. National Authority, BIS immediately transmits inspection notification via facsimile to the inspection point of contract to ascertain whether the facility (i) grants consent and (ii) requests assistance in preparing for the inspection. In absence of consent within four hours of facility receipt, BIS intends to seek an administrative warrant.</p> | <p>Acknowledges receipt of facsimile.</p> <p>(A) Indicated whether it grants consent.</p> <p>(B) May request advance team support. No requirement for reimbursement of U.S. Government's services.</p> |
| (B) Preparation for inspection | <p>(1) BIS advance team generally arrives in the vicinity of the facility to be inspected 1–2 days after OPCW notification for logistical and administrative preparations.</p> <p>(2) If records for activities that took place under the previous ownership of the facility are deemed relevant to the inspection, BIS will contact the previous owner of the facility to arrange for access to any such records required under the CWC that have not been transferred to the current owner.</p> | <p>If advance team support is provided, facility works with the advance team on inspection-related issues.</p> <p>The current owner of the facility must inform BIS if the previous owner of the facility did not transfer (to the current owner) records for activities that took place under the previous ownership.</p> |

(2) *Timing of notice.*—(i) *Schedule 1 facilities.* For declared Schedule 1 facilities, the Technical Secretariat will notify the USNA of an initial inspection not less than 72 hours prior to arrival of the Inspection Team in the United States, and will notify the USNA of a routine inspection not less than 24 hours prior to arrival of the Inspection Team in the United States. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. BIS will provide Host Team notice to the inspection point of contact of the facility as soon as possible after the OPCW notifies the USNA of the inspection.

(ii) *Schedule 2 plant sites.* For declared Schedule 2 plant sites, the Technical

Secretariat will notify the USNA of an initial or routine inspection not less than 48 hours prior to arrival of the Inspection Team at the plant site to be inspected. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. BIS will provide Host Team notice to the inspection point of contact at the plant site as soon as possible after the OPCW notifies the USNA of the inspection.

(iii) *Schedule 3 and UDOC plant sites.* For declared Schedule 3 and UDOC plant sites, the Technical Secretariat will notify the USNA of a routine inspection not less than 120 hours prior to arrival of the Inspection Team at the plant site to be inspected. The

USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. BIS will provide Host Team notice to the inspection point of contact of the plant site as soon as possible after the OPCW notifies the USNA of the inspection.

(b) *Period of inspections*—(1) *Schedule 1 facilities*. For a declared Schedule 1 facility, the Convention does not specify a maximum duration for an initial inspection. The estimated period of routine inspections will be as stated in the facility agreement, unless extended by agreement between the Inspection Team and the Host Team Leader, and will be based on the risk to the object and purpose of the Convention posed by the quantities of chemicals produced, the characteristics of the facility and the nature of the activities carried out there. The Host Team Leader will consult with the inspected facility on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See §716.4(c) and (i) of the CWC for a description of these activities.

(2) *Schedule 2 plant sites*. For declared Schedule 2 plant sites, the maximum duration of initial and routine inspections shall be 96 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected plant site on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See §716.4(c) and (i) of the CWC for a description of these activities.

(3) *Schedule 3 and UDOC plant sites*. For declared Schedule 3 or UDOC plant sites, the maximum duration of routine inspections shall be 24 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected plant site

on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See §716.4(c) and (i) of the CWC for a description of these activities.

(c) *Frequency of inspections*. The frequency of inspections is as follows:

(1) *Schedule 1 facilities*. As provided by the Convention, the frequency of inspections at declared Schedule 1 facilities is determined by the OPCW based on the risk to the object and purpose of the Convention posed by the quantities of chemicals produced, the characteristics of the facility and the nature of the activities carried out at the facility. The frequency of inspections will be stated in the facility agreement.

(2) *Schedule 2 plant sites*. As provided by the Convention and the Act, the maximum number of inspections at declared Schedule 2 plant sites is two per calendar year per plant site. The OPCW will determine the frequency of routine inspections for each declared Schedule 2 plant site based on the Inspection Team's assessment of the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site, and the nature of the activities carried out there. The frequency of inspections will be stated in the facility agreement, if applicable.

(3) *Schedule 3 plant sites*. As provided by the Convention, no declared Schedule 3 plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and UDOC plant sites in the United States may not exceed 20 per calendar year.

(4) *UDOC plant sites*. As provided by the Convention, no declared UDOC plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and UDOC plant sites in the United States may not exceed 20 per calendar year.

§716.6 Facility agreements.

(a) *Description and requirements*. A facility agreement is a site-specific agreement between the U.S. Government and the OPCW. Its purpose is to